IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 578 OF 1987

DEVASAHAYAN SOMAN ..PLAINTIFF

V/S

M/S. JAI INDUSTRIES & ANR. ..DEFENDANTS

AJAY FERNANDES I/B BILAWALA & CO. FOR PLAINTIFF.

DINSOO JAIWALLA WITH NIRANJAN LAPASIYA I/B MS. JAIWALLA & CO. AND M/S. NIRANJAN & CO., ADVOCATES FOR DEFENDANT NO. 1.

CORAM : S.K. SHAH, J.

JUDGMENT RESERVED ON 23-11-2006

JUDGMENT PRONOUNCED ON 6-12-2006

ORAL JUDGMENT

1. This is a suit for recovery of the arrears of salary amounting to Saudi Riyal 2,11,750 equivalent to Indian Rs. 6,98,775/- with interest.

2. The Plaintiff is an Indian Inhabitant. The defendant No. 1 is the recruiting agent for defendant No.2. Defendant No. 2 is a Public Limited Company incorporated in Saudi Arabia.

3. Pursuant to the advertisement in local newspapers on 31st March 1983 issued by defendant No. 1 the plaintiff applied to the defendant No. 2 through defendant No. 1 for the job with defendant No. 2 in Saudi Arabia. The plaintiff was accordingly interviewed by the General Manager Michael Sommer for and on behalf of the Defendants and he was selected for being employed with the defendant No. 1 as Assistant Manager at a monthly remuneration of Saudi Riyal 3000 excluding residential accommodation and other perquisites on 29th June, 1983. Initially the defendant No. 1 got executed at Bombay an ostensible agreement for Saudi Riyal 1100 for the job of driver. The plaintiff alleges that it was however agreed and understood that the plaintiff would be provided a monthly remuneration of 3000 Saudi Riyals plus residential accommodation and other perquisites. By letter dated 5th April 1983 the defendant No. 1 confirmed the plaintiff’s appointment as Assistant Manager on the monthly remuneration of Saudi Riyal 3000. The plaintiff then left for Saudi Arabia on 30th June, 1983. On 1st July, 1983 Abdulla A. Zahid, President and Managing Director of defendant No. 2

assigned to the plaintiff the post of Assistant

Manager. The defendant No. 2 inter alia was dealing in renting out cars for tourists as well as for locals. On 1st July, 1983, the plaintiff was given the certificate authorising him to handle missing cars and vehicles and also certifying that he had been appointed as Assistant Manager in the defendant No. 2 company. The plaintiff alleges that the defendant No. 2 raised his monthly remuneration to Saudi Riyals 3500 by reason of his excellant performance and the remuneration was paid at that rate for the month of July, 1983. The plaitiff, however, alleges that from the month of August, 1983, he was not paid anything towards monthly salary or remuneration, although he continued to serve the defendant No. 2 in the hope that he would be paid his legitimate dues. The plaintiff alleges that he carried out his duties, as assigned, sincerely and efficiently. The plaintiff alleges that in anticipation of getting legitimate dues he continued to work for defendant No. 2 for about 16 months. He repeatedly requested the defendant No. 2 to pay all the arrears of his salary and perquisites, but he was not paid.

4. The plaintiff further alleges that after 7/8

months the defendant No. 2 filed necessary papers with the licensing authorities of Saudi Arabia for issuing a driving licence to the plaintiff. The plaintiff continued to make demand of remuneration for the period from August 1983 onwards but the defendant No. 2 in order to avoid the liability lodged a false complaint against the plaintiff on 26th September, 1984 at Dammam. On the basis of the false complaint he was arrested and detained without trial or settlement of his legitimate dues, in Dammam Central prison. On 24th November, 1984 he was asked to leave the Port of Dammam without being informed of the charges levelled against him. The plaintiff alleges that the defendant No. 2 caused his wrongful confinement or imprisonment and detention without any trial maliciously and with a view to avoid their liability to pay his remuneration and other legitimate dues. After the deportation he came to India and contacted the defendant No. 1 and informed him all the facts and asked him to pay the arrears of remuneration. One Shamim Ahmed of defendant No. 1 assured him of

making enquiry into the matter. Lastly the plaintiff sent a notice on demand dated 31st October, 1985 through his advocate addressed to both

the defendants. Copy of this notice also addressed to Consulate General of Saudi Arabia with a request to intervene in the matter. The Consulate General of Saudi Arabia has thereupon contacted the plaintiff to submit all the documents. Accordingly the plaintiff submitted all the documents but did not hear anything from the said department. The defendants also did not pay arrears. Therefore, the plaintiff filed the suit for recovery of arrears of remuneration at the rate of 3500 Saudi Riyal from August 1983 to November 1984 including the leave salary totalling to Saudi Royal 84,000 equivalent to Rs. 2,77,200/-. The plaintiff also claim house rent allowance at the rate of Saudi Riyal 15,750 equivalent to Rs. 51,975/-. The plaintiff also claim transportation charges from July, 1983 to September, 1984 at the rate of S.R. 12,000 equivalent to Rs. 39,600/- and towards the damage suffered by the plaintiff on account of improper and wrongful confinement on behalf of the defendant No. 2 and claim Saudi Riyal 1,00,000 equivalent Rs. 3,30,000/-. Thus the plaintiff claims Saudi Riyal

2,11,750 equivalent to Rs. 6,98,775/-.

5. The defendant No. 1 resisted the suit by his written statement dated 4th July 1988 while

admitting that the plaintiff has entered into service contract with the defendant No. 2, he contends that the said contract was entered into in Saudi Arabia. The said contract was also to be performed in Saudi Arabia and therefore he contends that this court has no jurisdiction to entertain and try the suit. He contends that the said claim can be tried only by a court in Saudi Arabia. However, with regard to the claim for damages on account of alleged improper and wrongful confinement at the behest of defendant No.2 in Saudi Arabia, he contends that the said claim can be tried only by a court in Saudi Arabia and this court has no jurisdiction. He further contends that the plaintiff's claim is barred by law of limitation. He contends that the plaintiff's claim of arrears of salary from August 2003 whereas the suit is filed in January 1987 and therefore it is barred by law of limitation.

6. Without prejudice to these contentions he

contends that the plaintiff joined the service of the defendant No. 2 from July 1983. Though by the work contract the plaintiff had agreed to work as driver the plaintiff on visit to Saudi Arabia pleaded that he be given chance to work as Assistant

Manager of the 2nd defendant to prove his merit and defendant No. 2 acceeded to his request and allowed him to work as Asstt. Manager on trial basis. He contends that however the plaintiff within a month from the commencement of the service with defendant No. 2, started fighting with his colleagues. The plaintiff was found using foul language in office and even in front of the customers of the defendant No.2. On 8th August 1983 the plaintiff was asked to report to Afco Dallah for obtaining driving licence . As per practice and directions of Saudi Arabia Government, the plaintiff’s passport and the entry permit were kept with the defendant No.2, for the purpose of producing them before the licensing authorities for getting the licence. The plaintiff however disappeared from Afco Dallah i.e. Motor Licensing and Testing Ground and did not report to the defendant No. 2 for work. The plaintiff remained absent from service from 9th August, 1983

onwards. The plaintiff therefore committed breach of the works contract obtained by him from defendant No.2. The defendant No. 2 in their own interest advertised the disappearance of the plaintiff in the local newspapers on or about 25th August, 1983. The defendant No.2 sent a letter dated 7th September,

1983 to the Consulate General of India of Indian Embassy at Jeddah informing the plaintiff's disappearance. He further contends that the plaintiff went on hiding and dodged the Saudi Arabia Immigration and Police Authorities for about one year and he was ultimately traced at Dhahran by the Police authorities and then was deported to India through Dhahran Airport Immigration Office somewhere in November, 1985. Dhahran is over 1000 km. from Jeddah. The plaintiff's visa did not permit him to leave Jeddah without the permission of Saudi Arabia Immigration Authorities. Under these circumstances the defendant No. 1 contends that the plaintiff never discharged the service contract from 9th August, 1983 and therefore is not entitled to any arrears of remuneration or damages as claimed by him.

7. Defendant No. 2 resisted the suit by their

written statement filed on 3rd October, 1989. They also contend that this court has no jurisdiction to try the present suit. They contend that the defendants do not carry on any business or work for gain in India. They contend that the plaintiff entered into works contract with the 2nd defendant in Saudi Arabia and the contract was to be peformed

in Saudi Arabia. They contend that prior to entering into suit works contract with the plaintiff, the plaintiff had served with other parties in Saudi Arabia. Thus though under the works contract Exhibit "A" to the plaint, the plaintiff had agreed to work as a driver, he pleaded with these defendants that he be given a chance to work as Assistant Manager to prove his merit. Accordingly, defendant No. 2 acceeded to the plaintiff’s request and allowed him to work as Assistant Manager on probation and/or on trial basis. There are some contentions, as has been raised by the defendant No.1 as indicated above. Therefore, they also contend that they are not liable to pay to the plaintiff either the arrears of remuneration or damages.

8. In view of these pleadings, the following

issues are framed against which I have recorded my findings for the reasons given below :

ISSUES	FINDINGS
1) Whether the plaintiff proves that the court has jurisdiction to entertain and try this suit?	In the negative.
2) Whether the contract of employment Ex.A to the Plaint is entered into in India as alleged by the plaintiff and whether the	Does not arise.

said contract Ex.A is governed by the law of Saudi Arabia?	
3) Whether the suit is maintainable against Defendant No. 1 who are as admitted by the plaintiffs recruiting agent on behalf of defendant No. 2 the disclosed principal in view of Section 230 of the Indian Contract Act?	Does not arise.
4) Whether the plaintiff proves that he continued to work in Saudi Arabia with defendant No. 2 after 9th August, 1983?	Does not arise.
5) Whether the Plaintiff proves on 1st July,1983 in Saudi Arabia the defendant No. 2 appointed the plaintiff as the Assistant Manager at an increased salary under a new Contract for 3500 Saudi Rials per month by reason of his excellent performance as alleged in para 3 of the plaint?	Does not arise.
6) If the Issue No. 5 is in the affirmative then whether the Defendant No. 1 is liable on such new contract between the plaintiff and defendant No. 2 arrived at in Saudi Arabia?	Does not arise.
7) Whether the detention in	Does not arise.

	Dharain prison in Saudi Arabia and deportation of the plaintiff by the Saudi Arabian Govt. was at the instance of Defendant No. 2 as alleged in the plaint?	
8)	Whether the plaintiff was deported by the Govt. of Saudi Arabia and on what date?	Does not arise.
9)	Whether the suit is barred by the law of limitation?	Does not arise.
9A)	Whether the suit is bad for non-joinder of necessary party?	Does not arise.

10)	Whether the plaintiff is entitled to decree as prayed?	As per final order.

REASONS

ISSUE NO. 1

9. It is undisputed that the works contract dated 26th April, 1983 produced at Ex. P-4 was executed between the plaintiff and the defendant No. 2. That was for plaintiff's employment as driver with defendant No.2. That was alleged to have been executed at Mumbai. However, the stamp appearing on the documents annexed with it shows that it was executed at Jeddah. The plaintiff has admitted in his evidence that it was not the document on the basis of which he got an employment as Assistant Manager. The plaintiff has produced the relevant documents at Ex.P-7 which the plaintiff claims to be

works contract and that is undisputed. It is undisputed that this Ex.P-7 was executed by the plaintiff and the defendant No. 2 at Saudi Arabia. Exhibit P-7 is in the form of certificate titled as "TO WHOM IT MAY CONCERN". It specifies that this is is to certify that Mr. D. Soman, Plaintiff, holder of passport No. K-800494, Iqama No. 21968/1, working as an Asst. Manager in our company. It further mentions thast "We hereby authorising him to handle the missing Cars/Vehicles cases." This is

signed by Abdulillah A. Zahid, Managing Director of Universal Car Rental Co. Ltd., that is, defendant No.2. This certificate is issued on the letter head of defendant No. 2 company. That was executed on 1/7/83. Thus according to the admitted position the plaintiff was appointed as Assistant Manager with defendant No. 2 by virtue of this letter/works contract executed on 1/7/83 in Saudi Arabia. From the plaintiff’s own case he started working as Assistant Manager from 1st July, 1983, though he was appointed to work as driver as per the works contract Ex. P-4. Therefore Ex. P-4 the works contract under which the plaintiff was to work as driver was not at all acted upon. Thus even if Ex. P-4 is admitted it is of no avail to the plaintiff

because on reaching Saudi Arabia the plaintiff was appointed Assistant Manager as per Ex. -7 which was executed on 1/7/83 and the plaintiff admitted to have received received remuneration for the months of July and August 1983 at rate of Saudi Rial 3500 per month. It is further undisputed that the defendant No. 2 has no office in India much less in Mumbai. The contract of plaintiff to work as Assistant Manager was executed in Saudi Arabia. He had performed the work as Assistant Manager in Saudi Arabia. Therefore, it is clear that this court has

no jurisdiction to try the suit for recovery of arrears of remuneration for the work the plaintiff had caried out pursuant to the works contract in Saudi Arabia. Moreover, it is undisputed that the plaintiff was arrested in Saudi Arabia in August, 1983 and then he was detained and was deported to India in November 1984. This being the undisputed position it is clear that the plaintiff had not performed his duties as Assistant Manager with the defendant No. 2 from 9th August, 1984 onwards. Although the plaintiff has stated that he was arrested at the instance of defendant No. 2, there is no evidence in support thereof. It is undisputed that he disappeared when he was called to appear

before the authorities for granting driving licence. This disappearance of plaintiff could not be said to be at the instance of defendant No.2. Therefore it is clear that he cannot be said to have been arrested at the instance of defendant No.2. The defendant No. 2 had only published the plaintiff's disappearance and was found at Dahrain which was illegal as per the visa given to the plaintiff. Thus even for this reason the plaintiff would not be entitled to any relief. At any rate this court will have no jurisdiction to try this suit by way of claiming arrears and damages for the work carried

out by him in Saudi Arabia and for his detention in Saudi Araabia.

10. In this regard the learned counsel for the plaintiff has relied on the decision of this court rendered in the case of Rhodia Ltd. & Ors. v/s. Neon Laboratories Ltd. reported in 2005(1) ALL MR 703 for the purpose of making submission that even in the aforesaid circumstances this court will have jurisdiction to try the suit. However the facts of that case were quite different from the facts of the instant case before me. In that case the Defendants company had office in Mumbai although it was

incorporated under the English law. This is not the case in the instant case before me. Defendant No. 2 does not have any office in Mumbai. Moreover the works contract that was executed between the plaintiff and the defendant No. 2 company was executed on 1/7/83 in Saudi Arabia. The plaintiff was expected to carry out the work as per the works contract in Saudi Arabia, remuneration was to be paid to the plaintiff in Saudi Arabia. Under the circumstances, this court has no jurisdiction to try the suit and therefore, this issue shall have to be answered in negative. The suit is liable to be dismissed as this court has no jurisdiction.

However, with a view to decide the suit completely and in the event of different view on issue No. 1 I discuss other issues also but I answer all those issues as does not arise.

ISSUE NOS. 2 & 3

11. With regard to the contract which is produced at Ex. A to the plaint which is Ex. P-4, as discussed above although this contract entered into by the plaintiff in Mumbai it was requiring the plaintiff to work as driver which was never acted

upon. Moreover the defendant No. 1 had executed this contract for and on behalf of the defendant No. 1. Therefore, by virtue of provisions of Section 230 of the Indian Contract Act, the defendant No. 1 will not be liable to the plaintiff as the defendant No. 1 had disclosed his principal defendant No. 2. Moreover, the plaintiff has admitted in evidence that he is not relying on this contract at all. It is admitted position that the works contract Ex. P-4 was executed in favour of the plaintiff to work as driver. No sooner he landed in Saudi Arabia he was appointed to work as Assistant Manager. Therefore, the works contract at Ex. P-4 will be of no help to the plaintiff. Therefore, issue No. 2

will have to be answered in affirmative and issue No. 3 will have to be answered in negative. However these issues are answered as "does not arise" in view of this court having no jurisdiction.

ISSUE NO. 4

12. In this regard neither the plaintiff has stated anything nor led any evidence to show that since after August, 1983 he had worked as Assistant Manager with the defendant No. 2. In Ex. P-8

which is dated 24th May 1987 the letter on the letter head of the defendant No. 2, clearly mentions that by their letter they have intimated the police authorities of Saudi Arabia about the disappearance of the plaintiff. It clearly mentions that the plaintiff disappeared from 9th August, 1983. This clearly means that the plaintiff never worked as Assistant Manager with defendant No. 2 after August 1983. Hence this issue will have to be answered in the negative. However, this issue is answered as "does not arise" in view of this court having no jurisdiction.

ISSUE NO. 5

13. This is undisputed position and it has been

established by the certificate issued by the defendant No. 2 which is produced at Ex. P-7. Therefore this issue will have to be answere in the affirmative. However, this issue is answered as "does not arise" in view of this court having no jurisdiction.

ISSUE NO. 6

14. As discussed above the defendant No. 1 will not be liable to the plaintiff as plaintiff had entered into a new contract with defendant No. 2 in Saudi Arabia. Therefore, this issue will have to be answered in negative. However, this issue is answered as "does not arise" in view of this court having no jurisdiction.

ISSUE NO. 7

15. As discussed above the plaintiff’s detention in Dammam Central Prison in Saudi Arabia was not at the instance of the defendant No. 2 but because the plaintiff violated the terms of the visa granyted to him. Therefore, this issue will have to be answered in the negative. However, this issue is answered as

"does not arise" in view of this court having no jurisdiction.

ISSUE NO. 8

16. It is undisputed position that the plaintiff was deported by the Government of Saudi Arabia on or about 24th November, 1984. However, this issue is

answered as "does not arise" in view of this court having no jurisdiction.

ISSUE NO. 9

17. The suit is not barred by law of limitation as it is filed in January, 1987. However, as stated above the plaintiff has failed to prove that he worked from August 1983 onwards and he is not entitled to the relief. However, this issue is answered as "does not arise".

ISSUE NO. 9A

18. The plaintiff has failed to show how the suit is bad for non joinder of necessary parties. However, this issue is answered as "does not arise".

19. Consequently the suit fails and will have to be dismissed. The suit is accordingly dismissed with cost of defendant No. 1 only.

(S.K. SHAH, J.)